

AMENDED IN ASSEMBLY APRIL 29, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2662

Introduced by Assembly Member Bogh

February 22, 2002

An act to amend Sections 214 and 214.2 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2662, as amended, Bogh. Property tax: welfare exemptions: health care facilities.

Existing property tax law establishes a welfare exemption under which property is exempt from taxation if, among other things, that property is used exclusively for religious, hospital, scientific, or charitable purposes and is owned and operated by an entity, as provided, that is itself organized and operated for those purposes. For purposes of the welfare exemption, property used exclusively for religious, hospital, or charitable purposes includes facilities in the course of construction, as defined, that is not abandoned, as defined.

This bill would include within the welfare exemption property used exclusively for ~~health care purposes that meet specified conditions as to the ultimate ownership of that property by nonprofit, tax-exempt entities~~ *religious, hospital, scientific, or charitable purposes and owned and operated by a limited liability company having a single member religious, hospital, scientific, or charitable fund, foundation, or corporation, if the property and the organization meet specified, existing requirements relating to tax-exempt status.*

The bill would also provide, for purposes of the existing welfare exemption from property taxation, that property is in the course of construction, and not abandoned, if the construction ~~is delayed due to delays in financing or governmental approvals that are beyond the assessee's control and occur despite the assessee's exercise of care~~ *diligence or rehabilitation is financed or reimbursed from the proceeds of tax-exempt financing, and that specified conditions are met regarding the issuance of the bonds in connection with the tax-exempt financing, and the time constraints within which the construction or rehabilitation would be required to occur.*

Section 2229 of the Revenue and Taxation Code requires the Legislature to reimburse local agencies annually for certain property tax revenues lost as a result of any exemption or classification of property for purposes of ad valorem property taxation.

This bill would provide that, notwithstanding Section 2229 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for property tax revenues lost by them pursuant to the bill.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 214 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 214. (a) Property used exclusively for religious, hospital,
- 4 scientific, or charitable purposes owned and operated by
- 5 community chests, funds, foundations or corporations organized
- 6 and operated for religious, hospital, scientific, or charitable
- 7 purposes is exempt from taxation, including ad valorem taxes to
- 8 pay the interest and redemption charges on any indebtedness
- 9 approved by the voters prior to July 1, 1978, or any bonded
- 10 indebtedness for the acquisition or improvement of real property
- 11 approved on or after July 1, 1978, by two-thirds of the votes cast
- 12 by the voters voting on the proposition, if:
- 13 (1) The owner is not organized or operated for profit. However,
- 14 in the case of hospitals, the organization shall not be deemed to be
- 15 organized or operated for profit if, during the immediately
- 16 preceding fiscal year, operating revenues, exclusive of gifts,



1 endowments and grants-in-aid, did not exceed operating expenses
2 by an amount equivalent to 10 percent of those operating expenses.
3 As used herein, operating expenses include depreciation based on
4 cost of replacement and amortization of, and interest on,
5 indebtedness.

6 (2) No part of the net earnings of the owner inures to the benefit
7 of any private shareholder or individual.

8 (3) The property is used for the actual operation of the exempt
9 activity, and does not exceed an amount of property reasonably
10 necessary to the accomplishment of the exempt purpose.

11 (A) For the purposes of determining whether the property is
12 used for the actual operation of the exempt activity, consideration
13 shall not be given to use of the property for either or both of the
14 following described activities if that use is occasional:

15 (i) The owner conducts fundraising activities on the property
16 and the proceeds derived from those activities are not unrelated
17 business taxable income, as defined in Section 512 of the Internal
18 Revenue Code, of the owner and are used to further the exempt
19 activity of the owner.

20 (ii) The owner permits any other organization that meets all of
21 the requirements of this subdivision, other than ownership of the
22 property, to conduct fundraising activities on the property and the
23 proceeds derived from those activities are not unrelated business
24 taxable income, as defined in Section 512 of the Internal Revenue
25 Code, of the organization, are not subject to the tax on unrelated
26 business taxable income that is imposed by Section 511 of the
27 Internal Revenue Code, and are used to further the exempt activity
28 of the organization.

29 (B) For purposes of subparagraph (A):

30 (i) "Occasional use" means use of the property on an irregular
31 or intermittent basis by the qualifying owner or any other
32 qualifying organization described in clause (ii) of subparagraph
33 (A) that is incidental to the primary activities of the owner or the
34 other organization.

35 (ii) "Fundraising activities" means both activities involving
36 the direct solicitation of money or other property and the
37 anticipated exchange of goods or services for money between the
38 soliciting organization and the organization or person solicited.

39 (C) Subparagraph (A) shall have no application in determining
40 whether paragraph (3) has been satisfied unless the owner of the

1 property and any other organization using the property as provided
2 in subparagraph (A) have filed with the assessor duplicate copies
3 of valid unrevoked letters or rulings from the Internal Revenue
4 Service that state that the owner and the other organization qualify
5 as exempt organizations under Section 501(c)(3) of the Internal
6 Revenue Code. The owner of the property and any other
7 organization using the property as provided in subparagraph (A)
8 also shall file duplicate copies of their most recently filed federal
9 income tax returns.

10 (D) For the purposes of determining whether the property is
11 used for the actual operation of the exempt activity, consideration
12 shall not be given to the use of the property for meetings conducted
13 by any other organization if the meetings are incidental to the other
14 organization's primary activities, are not fundraising meetings or
15 activities as defined in subparagraph (B), are held no more than
16 once per week, and the other organization and its use of the
17 property meet all other requirements of paragraphs (1) to (5),
18 inclusive, of subdivision (a). The owner of the other organization
19 also shall file with the assessor duplicate copies of valid,
20 unrevoked letters or rulings from the Internal Revenue Service or
21 the Franchise Tax Board stating that the other organization, or the
22 national organization of which it is a local chapter or affiliate,
23 qualifies as an exempt organization under Section 501(c)(3) or
24 Section 501(c)(4) of the Internal Revenue Code or Section
25 23701d, 23701f, or 23701w, together with duplicate copies of that
26 organization's most recently filed federal income tax return, if the
27 organization is required by federal law to file a return.

28 Nothing in subparagraph (A), (B), (C), or (D) shall be construed
29 to either enlarge or restrict the exemption provided for in
30 subdivision (b) of Section 4 and Section 5 of Article XIII of the
31 California Constitution and this section.

32 (4) The property is not used or operated by the owner or by any
33 other person so as to benefit any officer, trustee, director,
34 shareholder, member, employee, contributor, or bondholder of the
35 owner or operator, or any other person, through the distribution of
36 profits, payment of excessive charges or compensations, or the
37 more advantageous pursuit of their business or profession.

38 (5) The property is not used by the owner or members thereof
39 for fraternal or lodge purposes, or for social club purposes except

1 where that use is clearly incidental to a primary religious, hospital,
2 scientific, or charitable purpose.

3 (6) The property is irrevocably dedicated to religious,
4 charitable, scientific, or hospital purposes and upon the
5 liquidation, dissolution or abandonment of the owner will not
6 inure to the benefit of any private person except a fund,
7 foundation, or corporation organized and operated for religious,
8 hospital, scientific, or charitable purposes.

9 (7) The property, if used exclusively for scientific purposes, is
10 used by a foundation or institution that, in addition to complying
11 with the foregoing requirements for the exemption of charitable
12 organizations in general, has been chartered by the Congress of the
13 United States (except that this requirement shall not apply when
14 the scientific purposes are medical research), and whose objects
15 are the encouragement or conduct of scientific investigation,
16 research, and discovery for the benefit of the community at large.

17 The exemption provided for herein shall be known as the
18 “welfare exemption.” This exemption shall be in addition to any
19 other exemption now provided by law, and the existence of the
20 exemption provision in paragraph (2) of subdivision (a) of Section
21 202 shall not preclude the exemption under this section for
22 museum or library property. Except as provided in subdivision (e),
23 this section shall not be construed to enlarge the college
24 exemption.

25 (b) Property used exclusively for school purposes of less than
26 collegiate grade and owned and operated by religious, hospital, or
27 charitable funds, foundations, or corporations, which property and
28 funds, foundations, or corporations meet all of the requirements of
29 subdivision (a), shall be deemed to be within the exemption
30 provided for in subdivision (b) of Section 4 and Section 5 of
31 Article XIII of the California Constitution and this section.

32 (c) Property used exclusively for nursery school purposes and
33 owned and operated by religious, hospital, or charitable funds,
34 foundations, or corporations, which property and funds,
35 foundations, or corporations meet all the requirements of
36 subdivision (a), shall be deemed to be within the exemption
37 provided for in subdivision (b) of Section 4 and Section 5 of
38 Article XIII of the California Constitution and this section.

39 (d) Property used exclusively for a noncommercial educational
40 FM broadcast station or an educational television station, and

owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(e) Property used exclusively for religious, charitable, scientific, or hospital purposes and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations or educational institutions of collegiate grade, as defined in Section 203, which property and funds, foundations, corporations, or educational institutions meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. As to educational institutions of collegiate grade, as defined in Section 203, the requirements of paragraph (6) of subdivision (a) shall be deemed to be met if both of the following are met:

(1) The property of the educational institution is irrevocably dedicated in its articles of incorporation to charitable and educational purposes, to religious and educational purposes, or to educational purposes.

(2) The articles of incorporation of the educational institution provide for distribution of its property upon its liquidation, dissolution, or abandonment to a fund, foundation, or corporation organized and operated for religious, hospital, scientific, charitable, or educational purposes meeting the requirements for exemption provided by Section 203 or this section.

(f) Property used exclusively for housing and related facilities for elderly or handicapped families and financed by, including, but not limited to, the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), or Section 811 of Public Law 101-625 (42 U.S.C. Sec. 8013), and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

The amendment of this paragraph made by Chapter 1102 of the Statutes of 1984 does not constitute a change in, but is declaratory of, the existing law. However, no refund of property taxes shall be required as a result of this amendment for any fiscal year prior to the fiscal year in which the amendment takes effect.

Property used exclusively for housing and related facilities for elderly or handicapped families at which supplemental care or services designed to meet the special needs of elderly or handicapped residents are not provided, or that is not financed by the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), or Section 811 of Public Law 101-625 (42 U.S.C. Sec. 8013), shall not be entitled to exemption pursuant to this subdivision unless the property is used for housing and related facilities for low- and moderate-income elderly or handicapped families. Property that would otherwise be exempt pursuant to this subdivision, except that it includes some housing and related facilities for other than low- or moderate-income elderly or handicapped families, shall be entitled to a partial exemption. The partial exemption shall be equal to that percentage of the value of the property that is equal to the percentage that the number of low- and moderate-income elderly and handicapped families occupying the property represents of the total number of families occupying the property.

As used in this subdivision, “low and moderate income” has the same meaning as the term “persons and families of low or moderate income” as defined by Section 50093 of the Health and Safety Code.

(g) (1) Property used exclusively for rental housing and related facilities and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations, including limited partnerships in which the managing general partner is an eligible nonprofit corporation, meeting all of the requirements of this section, or by veterans’ organizations, as described in Section 215.1, meeting all the requirements of paragraphs (1) to (7), inclusive, of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section and shall be entitled to a partial

1 exemption equal to that percentage of the value of the property that
2 the portion of the property serving lower income households
3 represents of the total property in any year in which either of the
4 following criteria applies:

5 (A) The acquisition, rehabilitation, development, or operation
6 of the property, or any combination of these factors, is financed
7 with tax-exempt mortgage revenue bonds or general obligation
8 bonds, or is financed by local, state, or federal loans or grants and
9 the rents of the occupants who are lower income households do not
10 exceed those prescribed by deed restrictions or regulatory
11 agreements pursuant to the terms of the financing or financial
12 assistance.

13 (B) The owner of the property is eligible for and receives
14 low-income housing tax credits pursuant to Section 42 of the
15 Internal Revenue Code of 1986, as added by Public Law 99-514.

16 (C) In the case of a claim, other than a claim with respect to
17 property owned by a limited partnership in which the managing
18 general partner is an eligible nonprofit corporation, that is filed for
19 the 2000–01 fiscal year or any fiscal year thereafter, 90 percent or
20 more of the occupants of the property are lower income
21 households whose rent does not exceed the rent prescribed by
22 Section 50053 of the Health and Safety Code. The total exemption
23 amount allowed under this subdivision to a taxpayer, with respect
24 to a single property or multiple properties for any fiscal year on the
25 sole basis of the application of this subparagraph, may not exceed
26 twenty thousand dollars (\$20,000) of tax.

27 (2) In order to be eligible for the exemption provided by this
28 subdivision, the owner of the property shall do both of the
29 following:

30 (A) (i) For any claim filed for the 2000–01 fiscal year or any
31 fiscal year thereafter, certify and ensure, subject to the limitation
32 in clause (ii), that there is an enforceable and verifiable agreement
33 with a public agency, a recorded deed restriction, or other legal
34 document that restricts the project's usage and that provides that
35 the units designated for use by lower income households are
36 continuously available to or occupied by lower income households
37 at rents that do not exceed those prescribed by Section 50053 of
38 the Health and Safety Code, or, to the extent that the terms of
39 federal, state, or local financing or financial assistance conflicts

1 with Section 50053, rents that do not exceed those prescribed by
2 the terms of the financing or financial assistance.

3 (ii) In the case of a limited partnership in which the managing
4 general partner is an eligible nonprofit corporation, the restriction
5 and provision specified in clause (i) shall be contained in an
6 enforceable and verifiable agreement with a public agency, or in
7 a recorded deed restriction to which the limited partnership
8 certifies.

9 (B) Certify that the funds that would have been necessary to
10 pay property taxes are used to maintain the affordability of, or
11 reduce rents otherwise necessary for, the units occupied by lower
12 income households.

13 (3) As used in this subdivision, “lower income households”
14 has the same meaning as the term “lower income households” as
15 defined by Section 50079.5 of the Health and Safety Code.

16 (h) Property used exclusively for an emergency or temporary
17 shelter and related facilities for homeless persons and families and
18 owned and operated by religious, hospital, scientific, or charitable
19 funds, foundations, or corporations meeting all of the
20 requirements of this section shall be deemed to be within the
21 exemption provided for in subdivision (b) of Section 4 and Section
22 5 of Article XIII of the California Constitution and this section.
23 Property that otherwise would be exempt pursuant to this
24 subdivision, except that it includes housing and related facilities
25 for other than an emergency or temporary shelter, shall be entitled
26 to a partial exemption.

27 As used in this subdivision, “emergency or temporary shelter”
28 means a facility that would be eligible for funding pursuant to
29 Chapter 11 (commencing with Section 50800) of Part 2 of
30 Division 31 of the Health and Safety Code.

31 (i) Property used exclusively for housing and related facilities
32 for employees of religious, charitable, scientific, or hospital
33 organizations that meet all the requirements of subdivision (a) and
34 owned and operated by funds, foundations, or corporations that
35 meet all the requirements of subdivision (a) shall be deemed to be
36 within the exemption provided for in subdivision (b) of Sections
37 4 and 5 of Article XIII of the California Constitution and this
38 section to the extent the residential use of the property is
39 institutionally necessary for the operation of the organization.

1 (j) For purposes of this section, charitable purposes include
2 educational purposes. For purposes of this subdivision,
3 “educational purposes” means those educational purposes and
4 activities for the benefit of the community as a whole or an
5 unascertainable and indefinite portion thereof, and shall not
6 include those educational purposes and activities that are primarily
7 for the benefit of an organization’s shareholders. Educational
8 activities include the study of relevant information, the
9 dissemination of that information to interested members of the
10 general public, and the participation of interested members of the
11 general public.

12 ~~(k) Property used exclusively for health care purposes,~~
13 ~~including, without limitation, any residential care facility for the~~
14 ~~elderly, assisted living facility, child daycare center, adult daycare~~
15 ~~facility, or skilled nursing facility, that is owned and operated by~~
16 ~~a limited liability company, the sole members of which are~~
17 ~~organizations that qualify as tax-exempt organizations under~~
18 ~~Section 501(c)(3) of the Internal Revenue Code, shall be deemed~~
19 ~~to be within the exemption provided for in subdivision (b) of~~
20 ~~Section 4 and Section 5 of Article XIII of the California~~
21 ~~Constitution and this section.~~

22 *(k) Property used exclusively for religious, hospital, scientific,*
23 *or charitable purposes and owned and operated by a limited*
24 *liability company having a single member religious, hospital,*
25 *scientific, or charitable fund, foundation, or corporation, which*
26 *property and fund, foundation, or corporation meet all the*
27 *requirements of subdivision (a), shall be deemed to be within the*
28 *exemption provided for in subdivision (b) of Section 4 and Section*
29 *5 of Article XIII of the California Constitution and this section.*

30 SEC. 2. Section 214.2 of the Revenue and Taxation Code is
31 amended to read:

32 214.2. (a) As used in Section 214.1, “facilities in the course
33 of construction” shall include the demolition or razing of a
34 building with the intent to replace it with facilities to be used
35 exclusively for religious, hospital, or charitable purposes.

36 (b) As used in Section 214.1, “facilities in the course of
37 construction” shall include definite onsite physical activity
38 connected with construction or rehabilitation of a new or existing
39 building or improvement, that results in changes visible to any
40 person inspecting the site, where the building or improvement is

1 to be used exclusively for religious, hospital, or charitable
2 purposes. Activity as described in the preceding sentence having
3 been commenced and not yet finished, unless abandoned, shall
4 establish that a building or improvement is “under construction”
5 for the purposes of Section 5 of Article XIII of the California
6 Constitution. Construction shall not be considered “abandoned”
7 if delayed due to ~~financing delays in, delays in governmental~~
8 ~~approvals, or other~~ reasonable causes and circumstances beyond
9 the assessee’s control, that occur notwithstanding the exercise of
10 ordinary care and the absence of willful neglect. *Construction or*
11 *rehabilitation financed or reimbursed in whole or in part from the*
12 *proceeds of any tax-exempt financing, that has been commenced*
13 *but not yet finished, shall not be deemed to be abandoned if both*
14 *of the following conditions are met:*

15 (1) *The construction or rehabilitation commences not later*
16 *than 180 days following the date the issuer of the bonds to be issued*
17 *in connection with the tax-exempt financing, by resolution or in*
18 *any other reasonable form, declares its official intent to initiate the*
19 *process for the issuance of the bonds to be issued in connection*
20 *with the tax-exempt financing.*

21 (2) *The construction or rehabilitation is substantially*
22 *completed not later than 36 months following the date specified in*
23 *paragraph (1).*

24 SEC. 3. Notwithstanding Section 2229 of the Revenue and
25 Taxation Code, no appropriation is made by this act and the state
26 shall not reimburse any local agency for any property tax revenues
27 lost by it pursuant to this act.

28 SEC. 4. This act provides for a tax levy within the meaning of
29 Article IV of the Constitution and shall go into immediate effect.